

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division**

TATYANA A. BABAKAEVA,)
v.)
Plaintiff,)
PAUL H. WILSON and)
WILSON & WILSON, P.C.,)
Defendants.)
Civil Action No.: 4:09cv58

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL

The Defendants, Paul H. Wilson (“Wilson”) and Wilson & Wilson, P.C. (“Wilson & Wilson”, collectively the “Defendants”), submit this Memorandum in support of their Motion to Compel under Rule 37 of the Federal Rules of Civil Procedure.

On September 2, 2009, the Defendants served Interrogatories and Request for Production of Documents on the Plaintiff. The Defendants also served Request for Admissions on September 11, 2009. The Plaintiff filed her responses to the initial discovery on October 2, 2009. A copy of Babakaeva's responses are attached to this Memorandum as Exhibit "A".

Among other things, Wilson requested that the Plaintiff “itemize the damages alleged in your Amended Complaint, explaining the source of calculation for any estimated damages and any documents which relate in any way to your claimed damages.” In response, the Plaintiff incorporated the response in her Initial Disclosure and directed counsel to the documents produced in response to the Request for Production of Documents. The Plaintiff did not itemize those documents which were

specifically responsive to Interrogatory No. 12. The calculations and disclosures provided in the Initial Disclosures with respect to the defamation, fraud and conversion counts are entirely inadequate to prepare an appropriate defense. Babakaeva identified her defamation damages as “past and future suffering, embarrassment \$120,000.00”. With regard to fraud and conversion, she claims to have suffered losses as a result of “suffering, embarrassment, suffering due to inability to obtain medical/dental insurance and/or pay for services; costs of reimbursement for charitable/community support \$276,873.21”.

The documents produced by Ms. Babakaeva shed no light on these undifferentiated summaries of the alleged damage. There are no medical or dental bills nor receipts or records showing Ms. Babakaeva must “reimburse” any agency for charitable or community support. Indeed, other than legal bills which have been separately itemized, there is no documentary evidence of harm. Moreover, as Ms. Babakaeva has not alleged statements which are defamatory *per se*, she is not excused from the burden of producing evidence that alleged defamation caused her financial harm.¹ *Tronfeld v. Nationwide Mut. Ins. Co.*, 272 Va. 709, 713, 636 S.E. 2d 447, 449 (2006). Finally, fraud may not be the basis for recovering damages for “suffering”. Such recovery being linked in Virginia to physical harm.

In addition to the shortcomings in the itemization of her damages, Ms. Babakaeva failed to produce relevant documents necessary to prepare a defense. Specifically, the Defendants requested that the Plaintiff produce documents related to her status as a legal resident in the United States of America, including any correspondence or evidence of

¹ Although the Plaintiff's count is styled defamation *per se*, the statements attributed to Wilson do not relate to Ms. Babakaeva's employment, profession or conduct involving moral turpitude.

communication with any immigration or related agency. The Plaintiff responded to this Request by stating there were “None in Plaintiff’s possession.” and that “No such documents exists.” A central issue in Plaintiff’s claim is her disclosure – during a divorce hearing – that she expected to be deported in a matter of weeks. Indeed, it was the Plaintiff’s concern over her impending deportation that led the Hampton Circuit Court to consider the issue of child custody *sua sponte* – which is the sole basis for Plaintiff’s claim of malpractice. In telephone conversations attempting to resolve disagreements over discovery, the Plaintiff has admitted that immigration proceedings were scheduled for the weeks immediately following the divorce hearing. She acknowledged having documents related to those proceedings, but has failed to produce them contending that the Request for Production of Documents did not reasonably encompass them.

Likewise, the Defendant requested evidence of Plaintiff’s income “from any source”. In response, the Plaintiff produced income tax returns showing income of less than \$4,000.00 during any year. These income tax returns do not account for the other sources of income the Plaintiff receives and the Plaintiff has thus far refused to supplement this Response. Again, in attempting to resolve these issues the Plaintiff has refused to disclose other sources of income, contending that the Request only related to wages, excusing her from disclosing her other sources of support.

Despite efforts to resolve the continuing disagreement, the Plaintiff and the Defendants have been unable to reach agreement on a satisfactory supplement to the outstanding discovery. Accordingly, the Defendants move the Court to enter an Order compelling the Plaintiff’s further response and awarding the Defendants the costs incurred in filing this Motion and proceeding in the matter.

PAUL H. WILSON and WILSON & WILSON, P.C.

By: /s/ Douglas E. Miller
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on October 22, 2009, that I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following. I also served a true copy of the foregoing via first-class mail, postage prepaid, on:

Tatyana Babakaeva
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Plaintiff, appearing pro se

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